

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE APRIL 18, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 385

Introduced by Senator Ducheny

February 17, 2005

An act to amend ~~and repeal~~ Section 60640 of the Education Code, relating to pupil assessment.

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Ducheny. Pupil assessment.

Existing law, the Standardized Testing and Reporting (STAR) Program, requires each school district, charter school, and county office of education to administer to each of its pupils in grades 3 and 7 a designated achievement test and, until July 1, 2007, to each of its pupils in grades 2 to 11, inclusive, and after July 1, 2007, to each of its pupils in grades 3 to 11, inclusive, a standards-based achievement test.

Existing law requires, until July 1, 2007, a pupil of limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, to take a test in his or her primary language if a test is available and fewer than 12 months have elapsed after the pupil's initial enrollment in a California public or nonpublic school.

~~This bill would instead require a pupil of limited English proficiency who is enrolled in those grades and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months to take a test in his or her primary language if the test is available.~~

Existing law, operative July 1, 2007, requires a pupil identified as limited English proficient who is enrolled in any of grades 3 to 11,

inclusive, and has not been reclassified as proficient in English, to take a test in his or her primary language if a test is available and if fewer than 12 months have elapsed after his or her initial enrollment in any public school in the state.

~~This bill would instead provide that, effective January 1, 2007, a pupil with limited English proficiency who is enrolled in any of grades 3 to 11, inclusive, is required to take a test in his or her primary language if a test is available, and would require these tests to be administered only to limited-English-proficient pupils who either receive instruction in their primary language or have been enrolled in a school in the United States for less than 12 months.~~ *a pupil who is required to take an achievement test shall take that test in his or her primary language if a test is available, if the pupil is identified as limited-English-proficient, and is either literate in his or her primary language or receives instruction in his or her primary language. The bill would require a pupil identified as limited-English-proficient who has attended a school in the United States for at least 3 consecutive years to take an additional achievement test in English, except as specified. The bill would require the State Department of Education to develop a primary language assessment in the dominant primary language of limited-English-proficient pupils.*

This bill would make other technical, nonsubstantive changes.

To the extent that this bill would impose additional duties on school districts, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *The Legislature finds and declares all of the*
2 *following:*

(1) Valid and reliable academic assessment data is critical to the education accountability system.

(2) Approximately one of every four pupils enrolled in the public schools is identified as a pupil with limited English proficiency.

(3) Exclusive reliance on academic assessments designed for native English speakers to gauge the academic progress of pupils with limited English-proficiency violates standards for educational testing established by recognized national educational institutions including the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

(4) The federal No Child Left Behind Act of 2001 requires states to test all pupils in a valid and reliable manner and requires, to the extent practicable, that pupils with limited English proficiency be tested in the language and form most likely to yield accurate data on academic ability in academic subject areas.

(5) The current academic assessment system does not allow pupils with limited English proficiency to show academic ability in academic subject areas.

(6) An accountability system that would yield more accurate data on the academic ability of pupils with limited English proficiency is feasible and practicable.

(7) A coalition of school districts, parents, and organizations from throughout the state recently filed a legal challenge that highlights the harm to pupils, parents, teachers, schools, and communities that may be resulting from invalid testing of pupils with limited English proficiency.

(b) It is the intent of the Legislature to bring the system of assessing the academic progress of pupils with limited English proficiency into alignment with requirements of the federal No Child Left Behind Act of 2001.

SECTION 1.—

SEC. 2. Section 60640 of the Education Code, as amended by Section 15 of Chapter 233 of the Statutes of 2004, is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2004-05 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642, and shall administer to each of its pupils in grades 2 to 11, inclusive, the ~~standards-based~~ *standards-based* achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades, *or to pupils*, other than those required by ~~subdivision (b)~~ *subdivisions (b) and (f)* as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) (1) (A) A pupil identified as limited English proficient, and who either *is literate in his or her primary language or* receives instruction in his or her primary language ~~or has been enrolled in a school in the United States for less than 12 months~~, shall take ~~the achievement test~~ *an achievement test required by subdivision (b)* in his or her primary language if a test is available.

~~(B) At the option of the school district, a pupil with limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision shall be subject to the requirements of subdivision (a)~~

~~of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable. Results of these primary language tests may also be disaggregated by type of program, duration in a program, and English proficiency.~~

(B) (i) A pupil identified as limited-English-proficient who has attended a school in the United States, excluding the Commonwealth of Puerto Rico, for three consecutive years or more, shall, in addition to those achievement tests required by subparagraph (A), take an achievement test in English that is aligned to state-adopted language arts content standards.

(ii) The department shall, by January 1, 2008, modify an achievement test administered pursuant to clause (i) in order to eliminate unnecessary linguistic complexity to the extent possible. The modifications shall be based upon research designed to maintain the rigor of the test but enable a pupil with limited English proficiency to better understand test directions and questions.

(iii) Notwithstanding clause (i), a school district may, on a case-by-case basis, administer an achievement test in the primary language of a pupil if it finds that it is likely that a primary language test would yield an assessment that is more accurate and reliable. This authorization shall not exceed two consecutive years for a particular pupil.

(C) An achievement test administered pursuant to this subdivision shall yield assessment data that is more accurate than that data that yields from an achievement test in English required by subdivision (b). Results of an achievement test administered pursuant to this subdivision may also be disaggregated by type of program, duration in a program, and English proficiency. Results of an achievement test administered pursuant to this subdivision shall be used to determine adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001, and for purposes of the Academic Performance Index.

(2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997-98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and adopting primary language ~~assessments~~ *versions of assessments required by subdivision (b)* that are aligned to the state academic content standards. ~~Subject to the availability of funds, primary language assessments shall be developed and adopted for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils no later than July 1, 2008.~~ The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools. *The department shall, by January 1, 2007, conduct a survey of public schools in order to identify and quantify assessments in languages other than the dominant primary language, and develop criteria to determine when assessments in languages other than the dominant primary language should be administered.*

(B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.

(C) In choosing a contractor to develop a primary language assessment the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.

(E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.

(F) On or before January 1, ~~2006~~ 2007, the department shall submit to the Legislature a report on the development and implementation of the initial primary language assessments *and*

1 *modified English language assessments* and recommendations on
2 the development and implementation of future assessments and
3 funding requirements.

4 (g) (1) The Superintendent shall apportion funds to school
5 districts to enable school districts to meet the requirements of
6 subdivisions (b) and (f).

7 (2) The state board shall annually establish the amount of
8 funding to be apportioned to school districts for each test
9 administered and shall annually establish the amount that each
10 publisher shall be paid for each test administered under the
11 agreements required pursuant to Section 60643. The amounts to
12 be paid to the publishers shall be determined by considering the
13 cost estimates submitted by each publisher each September and
14 the amount included in the annual Budget Act, and by making
15 allowance for the estimated costs to school districts for
16 compliance with the requirements of subdivisions (b) and (f).

17 (3) An adjustment to the amount of funding to be apportioned
18 per test may not be valid without the approval of the Director of
19 Finance. A request for approval of an adjustment to the amount
20 of funding to be apportioned per test shall be submitted in writing
21 to the Director of Finance and the chairpersons of the fiscal
22 committees of both houses of the Legislature with accompanying
23 material justifying the proposed adjustment. The Director of
24 Finance is authorized to approve only those adjustments related
25 to activities required by statute. The Director of Finance shall
26 approve or disapprove the amount within 30 days of receipt of
27 the request and shall notify the chairpersons of the fiscal
28 committees of both houses of the Legislature of the decision.

29 (h) For the purposes of making the computations required by
30 Section 8 of Article XVI of the California Constitution, the
31 appropriation for the apportionments made pursuant to paragraph
32 (1) of subdivision (g), and the payments made to the publishers
33 under the contracts required pursuant to Section 60643 or
34 subparagraph (C) of paragraph (1) of subdivision (a) of Section
35 60605 between the department and the contractor, are "General
36 Fund revenues appropriated for school districts," as defined in
37 subdivision (c) of Section 41202, for the applicable fiscal year,
38 and included within the "total allocations to school districts and
39 community college districts from General Fund proceeds of taxes

1 appropriated pursuant to Article XIII B,” as defined in
2 subdivision (e) of Section 41202, for that fiscal year.

3 (i) As a condition to receiving an apportionment pursuant to
4 subdivision (g), a school district shall report to the
5 Superintendent all of the following:

6 (1) The number of pupils enrolled in the school district in
7 grades 2 to 11, inclusive.

8 (2) The number of pupils to whom an achievement test was
9 administered in grades 2 to 11, inclusive, in the school district.

10 (3) The number of pupils in paragraph (1) who were exempted
11 from the test at the request of their parents or guardians.

12 (j) This section shall become inoperative on July 1, 2007, and
13 as of January 1, 2008, is repealed, unless a later enacted statute;
14 that becomes operative on or before January 1, 2008, deletes or
15 extends the dates on which it becomes inoperative and is
16 repealed.

17 ~~SEC. 2.—~~

18 *SEC. 3.* Section 60640 of the Education Code, as added by
19 Section 16 of Chapter 233 of the Statutes of 2004, is amended to
20 read:

21 60640. (a) There is hereby established the Standardized
22 Testing and Reporting Program, to be known as the STAR
23 Program.

24 (b) Commencing in the 2007-08 fiscal year and each fiscal
25 year thereafter, and from the funds available for that purpose,
26 each school district, charter school, and county office of
27 education shall administer to each of its pupils in grades 3 and 7
28 the achievement test designated by the state board pursuant to
29 Section 60642, and shall administer to each of its pupils in grades
30 3 to 11, inclusive, the standards-based achievement test provided
31 for in Section 60642.5. The state board shall establish a testing
32 period to provide that all schools administer these tests to pupils
33 at approximately the same time during the instructional year,
34 except as necessary to ensure test security and to meet the final
35 filing date.

36 (c) The publisher and the school district shall provide two
37 makeup days for the testing of previously absent pupils within
38 the testing period established by the state board in subdivision
39 (b).

1 (d) The governing board of the school district may administer
2 achievement tests in grades, *or to pupils*, other than those
3 required by ~~subdivision (b)~~ *subdivisions (b) and (f)* as it deems
4 appropriate.

5 (e) Pursuant to paragraph (17) of subsection (a) of Section
6 1412 of Title 20 of the United States Code, individuals with
7 exceptional needs, as defined in Section 56026, shall be included
8 in the testing requirement of subdivision (b) with appropriate
9 accommodations in administration, where necessary, and those
10 individuals with exceptional needs who are unable to participate
11 in the testing, even with accommodations, shall be given an
12 alternate assessment.

13 (f) (1) A pupil identified as limited English proficient, and
14 who either *is literate in his or her primary language or* receives
15 instruction in his or her primary language ~~or has been enrolled in~~
16 ~~a school in the United States for less than 12 months~~, shall take
17 ~~the achievement test~~ *an achievement test required by subdivision*
18 *(b) in his or her primary language if a test is available.*

19 ~~(2) At the option of the school district, a pupil with limited~~
20 ~~English proficiency who is enrolled in any of grades 3 to 11,~~
21 ~~inclusive, may take a second achievement test in his or her~~
22 ~~primary language. Primary language tests administered pursuant~~
23 ~~to this subdivision are be subject to the requirements of~~
24 ~~subdivision (a) of Section 60641. These primary language tests~~
25 ~~shall produce individual pupil scores that are valid and reliable.~~
26 ~~Results of these primary language tests may also be~~
27 ~~disaggregated by type of program, duration in a program, and~~
28 ~~English proficiency. Notwithstanding any other law, the state~~

29 (2) (A) *A pupil identified as limited-English-proficient who has*
30 *attended a school in the United States, excluding the*
31 *Commonwealth of Puerto Rico, for three consecutive years or*
32 *more, shall, in addition to those achievement tests required by*
33 *paragraph (1), take an achievement test in English that is aligned*
34 *to state-adopted language arts content standards.*

35 (B) *The department shall, by January 1, 2008, modify an*
36 *achievement test administered pursuant to subparagraph (A) in*
37 *order to eliminate unnecessary linguistic complexity to the extent*
38 *possible. The modifications shall be based upon research*
39 *designed to maintain the rigor of the test but enable a pupil with*

1 *limited English proficiencies to better understand test directions*
2 *and questions.*

3 *(C) Notwithstanding subparagraph (A), a school district may,*
4 *on a case-by-case basis, administer an achievement test in the*
5 *primary language of a pupil if it finds that it is likely that a*
6 *primary language test would yield an assessment that is more*
7 *accurate and more reliable. This authorization shall not exceed*
8 *two consecutive years for a particular pupil.*

9 *(3) An achievement test administered pursuant to this*
10 *subdivision shall yield assessment data that is more accurate*
11 *than that data that yields from an achievement test in English*
12 *required by subdivision (b). Results of an achievement test*
13 *administered pursuant to this subdivision may also be*
14 *disaggregated by type of program, duration in a program, and*
15 *English proficiency. Results of an achievement test administered*
16 *pursuant to this subdivision shall be used to determine adequate*
17 *yearly progress pursuant to the federal No Child Left Behind Act*
18 *of 2001, and for purposes of the Academic Performance Index.*

19 *(4) Notwithstanding any other provision of law, the state board*
20 *shall designate for use, as part of this program, a single primary*
21 *language test in each language for which a test is available for*
22 *grades 3 to 11, inclusive, pursuant to the process used for*
23 *designation of the assessment chosen in the 1997-98 fiscal year,*
24 *as specified by Sections 60642 and 60643, and as specified by*
25 *Section 60642.5, as applicable.*

26 *(3) (A) The department shall use funds made available*
27 *pursuant to Title VI of the federal No Child Left Behind Act of*
28 *2001 and appropriated by the annual Budget Act for the purpose*
29 *of developing and adopting primary language versions of*
30 *assessments required by subdivision (b) that are aligned to the*
31 *state academic content standards in the dominant primary*
32 *language of limited-English-proficient pupils no later than July*
33 *1, 2008. The dominant primary language shall be determined by*
34 *the count in the annual language census of the primary language*
35 *of each limited-English-proficient pupil enrolled in the*
36 *California public schools. The department shall, by January 1,*
37 *2007, conduct a survey of public schools in order to identify and*
38 *quantify assessments in languages other than the dominant*
39 *primary language, and develop criteria to determine when*

1 *assessments in languages other than the dominant primary*
2 *language should be administered.*

3 *(B) Once a dominant primary language assessment is*
4 *available for use for a specific grade level, it shall be*
5 *administered in place of the assessment designated pursuant to*
6 *paragraph (1) for that grade level.*

7 *(C) In choosing a contractor to develop a primary language*
8 *assessment the state board shall consider the criteria for*
9 *choosing a contractor or test publisher as specified by Sections*
10 *60642 and 60643, and as specified by Section 60642.5, as*
11 *applicable.*

12 *(D) Subject to the availability of funds, the assessments shall*
13 *be developed in grade order starting with the lowest grade*
14 *subject to the STAR Program.*

15 *(E) If the state board contracts for the development of primary*
16 *language assessments or test items to augment an existing*
17 *assessment, the state shall retain ownership rights to the*
18 *assessment and the test items. With the approval of the state*
19 *board, the department may license the test for use in other states*
20 *subject to a compensation agreement approved by the*
21 *Department of Finance.*

22 *(g) (1) The Superintendent of Public Instruction shall*
23 *apportion funds to school districts to enable school districts to*
24 *meet the requirements of subdivision (b), the alternative*
25 *assessment required by subdivision (e), and subdivision (f).*

26 *(2) The state board shall annually establish the amount of*
27 *funding to be apportioned to school districts for each test*
28 *administered and shall annually establish the amount that each*
29 *publisher shall be paid for each test administered under the*
30 *agreements required pursuant to Section 60643. The amounts to*
31 *be paid to the publishers shall be determined by considering the*
32 *cost estimates submitted by each publisher each September and*
33 *the amount included in the annual Budget Act, and by making*
34 *allowance for the estimated costs to school districts for*
35 *compliance with the requirements of subdivision (b), the*
36 *alternative assessment required by subdivision (e), and*
37 *subdivision (f).*

38 *(3) An adjustment to the amount of funding to be apportioned*
39 *per test may not be valid without the approval of the Director of*
40 *Finance. A request for approval of an adjustment to the amount*

1 of funding to be apportioned per test shall be submitted in writing
2 to the Director of Finance and the chairpersons of the fiscal
3 committees of both houses of the Legislature with accompanying
4 material justifying the proposed adjustment. The Director of
5 Finance is authorized to approve only those adjustments related
6 to activities required by statute. The Director of Finance shall
7 approve or disapprove the amount within 30 days of receipt of
8 the request and shall notify the chairpersons of the fiscal
9 committees of both houses of the Legislature of the decision.

10 (h) For the purposes of making the computations required by
11 Section 8 of Article XVI of the California Constitution, the
12 appropriation for the apportionments made pursuant to paragraph
13 (1) of subdivision (g), and the payments made to the publishers
14 under the contracts required pursuant to Section 60643 or
15 subparagraph (C) of paragraph (1) of subdivision (a) of Section
16 60605 between the department and the contractor, are “General
17 Fund revenues appropriated for school districts,” as defined in
18 subdivision (c) of Section 41202, for the applicable fiscal year,
19 and included within the “total allocations to school districts and
20 community college districts from General Fund proceeds of taxes
21 appropriated pursuant to Article XIII B,” as defined in
22 subdivision (e) of Section 41202, for that fiscal year.

23 (i) As a condition to receiving an apportionment pursuant to
24 subdivision (g), a school district shall report to the
25 Superintendent all of the following:

26 (1) The number of pupils enrolled in the school district in
27 grades 3 to 11, inclusive.

28 (2) The number of pupils to whom an achievement test was
29 administered in grades 3 to 11, inclusive, in the school district.

30 (3) The number of pupils in paragraph (1) who were exempted
31 from the test at the request of their parents or guardians.

32 (j) The Superintendent and the state board are authorized and
33 encouraged to assist postsecondary educational institutions to use
34 the California Standards Tests for academic credit, or placement,
35 and admissions processes, or both purposes.

36 (k) The Superintendent shall, with the approval of the state
37 board, annually release to the public at least 25 percent of test
38 items from the standards-based achievement test provided for in
39 Section 60642.5 from the test administered in the previous year.

40 (l) This section shall become operative July 1, 2007.

1 ~~SEC. 3.—~~

2 *SEC. 4.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

O